IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 28939 of 2005(T)

I.A.1712/05 IN OS.52/1987 OF SUB COURT, TIRUR

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PETITIONER:

CHERIYAMU HAJI, S/O.CHOLAYIL MARAKKAR,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.K.VIPINDAS
SRI.HARISH R. MENON

RESPONDENTS:

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1. THIRUMANGALATH PACHIRU MANAKKAL-
UNNEEMA @ UNNIMAYA ANTHARJANAM,THRIKANAPURAM AMSOM
KOORADA DESOM, PONNANI TALUK, MALAPPURAM DISTRICT.

2. CHOLAYIL ABDUL KADER, S/O. ABDULLA,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

3. SUHARA, W/O. C.ABDUL KADER,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

4. KOTTIRI BALAN, S/O. KUTTAPPA,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

5. POOTHALISSERY VELAI, S/O. KORAN,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

* 6. PALAKKAPARAMBIL @ CHOLAPPURATH MUHAMMED,
S/O. MOIDEEN, THRIKANAPURAM AMSOM, KOORADA DESOM,
PONNANI TALUK, MALAPPURAM DISTRICT (DELETED)

* 7. NADOTTIL KOMU, S/O. NADOTTIL VEERAN,
KUTTIPURAM AMSOM, KUTTIPURAM DESOM,
MALAPPURAM DISTRICT. (DELETED)

8. VELAMPARAMBIL SAIDALI, S/O. MUHAMMED,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

9. CHOLAKARAN MUHAMMED,
S/O. CHOLAKKARAN SAIDALI, THRIKANAPURAM AMSOM,
KOORADA DESOM, PONNANI TALUK, MALAPPURAM DISTRICT.

10. CHERIYAMU, S/O.CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

11. ABDULLA, S/O.CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

12. ALI, S/O. CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

*13. UMMACHUMMA, D/O.CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT. (DELETED)

14. KATHIYUMMA, D/O. CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

* 15. PATHUMMA, D/O. CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT (DELETED)

16. MOIDU, S/O. CHOLAKKARAN SAIDALI,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

17. KUNJIPATHUMMA, W/O. CHOLAKKARAN MOIDU,
THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT.

18. SULAIMAN KUNJU, S/O. MUHAMMED MOIDEEN,
EZHUVATHURUTHI AMSOM, CHERUVAYKARA DESOM,
PONNANI TALUK, MALAPPURAM DISTRICT.

ADDL. 19. PATHUMMAKUTTY, W/O.LATE CHOLAKARAN MUHAMMED, THRIKANAPURAM AMSOM, KOORADA DESOM, PONNANI TALUK, MALAPPURAM DISTRICT.

20. ABOOBACKER, S/O.LATE CHOLAKARAN MUHAMMED, DO. DO.

21. HAMZA, S/O.LATE CHOLAKARAN MUHAMMED, DO. DO.

22. ALI, S/O.LATE CHOLAKARAN MUHAMMED, DO. DO.

23. UNNEMAKUTTY, W/O.LATE CHERIYAMU, DO. DO.

24. SAIDALAVI, S/O.LATE CHERIYAMU, DO. DO.

25. HUSSAIN, S/O. LATE CHERIYAMU, DO. DO.

26. PATHUTTY, D/O.LATE CHERIYAMU,DO. DO.

27. KUNHIPATHUMMA, W/O.LATE MOIDU, DO. DO.

28. BABU, S/O.LATE MOIDU, DO. DO.

29. PATHUTTY, D/O.MOIDU, DO. DO.

RESPONDENTS 6, 7, 13 & 15 DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE PETITIONER AS PER ORDER DT.6.3.06 IN I.A. 3556/06.

LEGAL REPRESENTATIVES OF R9, R10 AND R15 ARE IMPLEADED AS ADDL.RESPONDENTS 19 TO 29 IN THE WRIT PETITION AS PER ORDER DT.24.7.07 IN I.A.3555/06

R11, R19, R21, R22, R23 BY ADV. SRI.K.RAMACHANDRAN
R1 BY ADV.SRI.T.KRISHNAN UNNI
SMT.RESHMI RAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.28939/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF COMMN. REPORT DT.5.8.05.

EXT.P2 – TRUE COPY OF PLAN SUBMITTED BY ADV.COMMR.

EXT.P3 – TRUE COPY OF I.A.1712/05 IN O.S.52/87 OF TIRUR SUB COURT.

EXT.P4 – TRUE COPY OF ORDER DT.2.9.05 IN I.A.1712/05 IN O.S.52/87 OF TIRUR SUB COURT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.28939 OF 2005

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DATED THIS THE 24th JULY, 2007

J U D G M E N T

This Writ Petition is remaining defective on the reason that service is not completed on respondent Nos.20, 24, 25, 28 and 29. But I find that these respondents were along with others the legal heirs of deceased respondents 9, 10 and 15. Since some of the legal heirs of those deceased respondents are already served with notice, the interest of these respondents will also be represented in this Writ Petition by them. Moreover, it is seen that the petitioner was also fellow-defendant in the suit along with the predecessors-in-interest of these respondents. The Writ Petition therefore is not defective.

2. Ext.P4 order by which the learned Subordinate Judge dismissed an application submitted by defendants 8, 9, 10 and 11 in the suit to remit the commission report to the commissioner is under challenge. Though Sri.T.K.Vipindas, counsel for the petitioner would flay Ext.P4 with vehemence, I do not think that it can be said that Ext.P4 is vitiated to the extent of warranting correction under this Court's supervisory jurisdiction which is exceptional. I dismiss the Writ Petition. However, I permit the petitioner to adduce whatever evidence he has at his command, when the suit goes for trial, against

the commissioner's report. The petitioner can cross-examine the commissioner and once the entire evidence in the suit comes on record, the learned Sub Judge will hear the parties on the question whether there is warrant for remitting the commissioner's report on the basis of the objections in I.A.No.1712 of 2005 and thereafter give a decision on that question, even before final arguments in the suit are heard.

(PIUS C.KURIAKOSE, JUDGE)

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